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# Supreme Court of the United States

No. 497—OCTOBER TERM, 1948

WILLIE MELMOTH BOMAR,

*Petitioner,*

*against*

ROWENA KEITH KEYES,

*Respondent.*

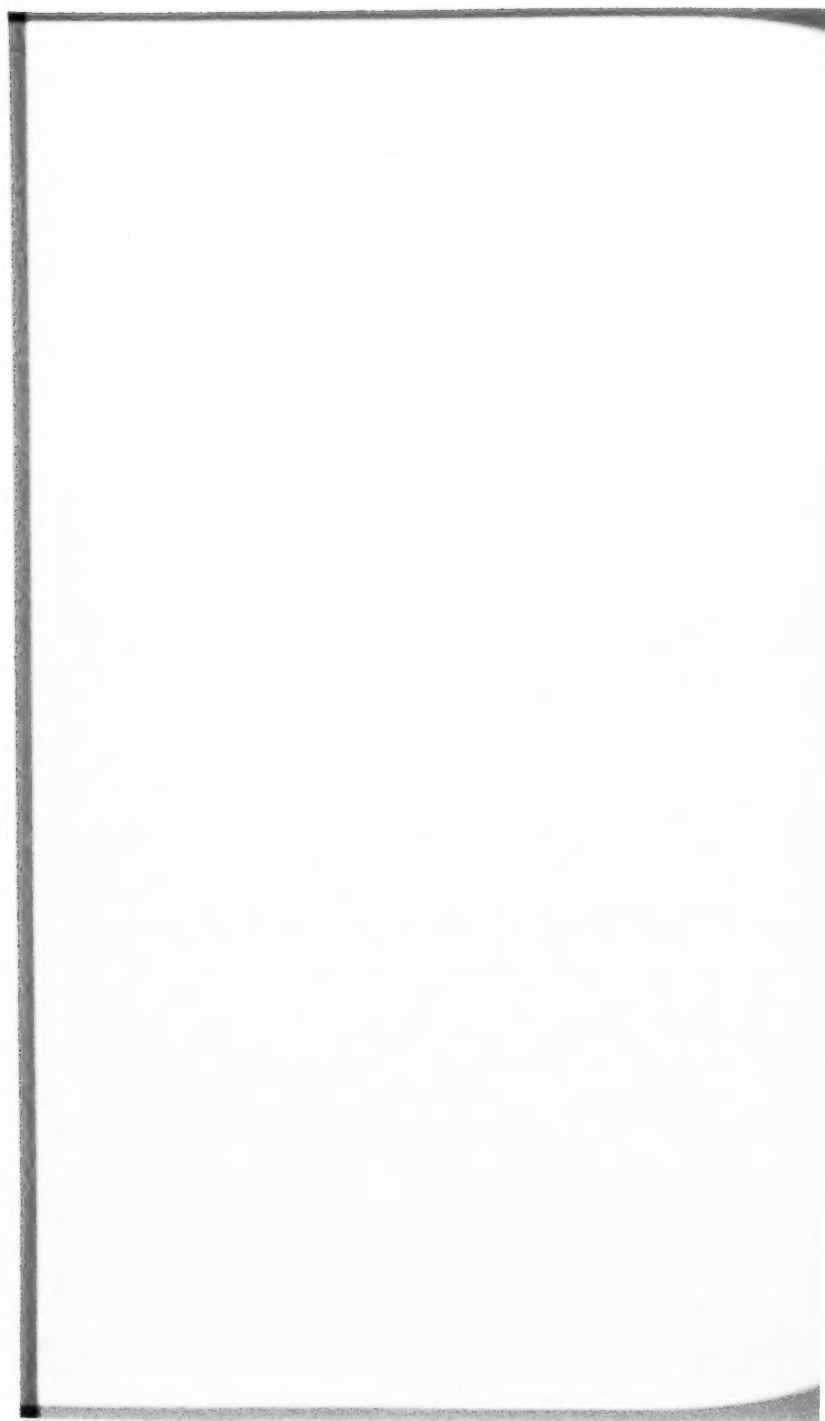
ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SECOND CIRCUIT.

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

January 18, 1949.

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ARTHUR H. KAHN,  
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# Supreme Court of the United States

No. 497—OCTOBER TERM, 1948

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*against*

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*Petitioner,*

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## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

It is impossible to determine the grounds of the petitioner's petition, her second within a year, for a writ of certiorari.

This Court denied her first petition, 332 U. S. 825 (1947), and denied rehearing, 332 U. S. 845 (1948).

Petitioner, a probationary teacher, was dismissed by the Board of Education of the City of New York in 1939. One of the many reasons which prompted her dismissal was her neglect of duty. The Commissioner of Education of the State of New York dismissed her appeal. *Matter of Bomar*, 62 N. Y. State Dept. Repts. 126 (1940). The New York Supreme Court sustained the Commissioner's determination. *Matter of Bomar v. Cole*, 177 N. Y. Misc. Repts. 740 (New York Supreme Court, Albany County, 1941).

Petitioner then instituted this action in the United States District Court for the Southern District of New York against the individual defendant and the City of New York for damages by reason of an alleged violation of her civil rights. In the District Court, Judge HULBERT dismissed her complaint. The Court of Appeals, Second Circuit, re-

versed and remanded the cause for trial. However, the opinion of the Court of Appeals stated that the City of New York was not liable for the supposed wrong. *Bomar v. Keyes*, 162 F. (2nd) 136 (1947). This Court refused certiorari, 332 U. S. 825, 845.

On December 17, 1947 the District Court entered an order on the mandate of the Court of Appeals, dismissing the complaint as against the City of New York and amending the title accordingly and directed that the action proceed as against the individual defendant, Rowena Keith Keyes. Petitioner appealed from the order of the District Court to the Court of Appeals, Second Circuit, which dismissed the appeal on the ground that the order of the District Court was not appealable, 170 F. (2nd) 310 (1948). On November 26, 1948 the District Court entered an order on the mandate of the Court of Appeals dismissing the appeal. The instant petition for a writ of certiorari then followed.

The petitioner's fancied grievances were fully reviewed upon her appeal to the Court of Appeals, Second Circuit, from the order of the District Court dismissing her complaint as against the City and remanding the case for trial as against the individual defendant; 162 F. (2d) 136 (1947); certiorari denied, 332 U. S. 825 (1947); rehearing denied, 332 U. S. 845 (1948). It is clear that the District Court acted properly in entering the order of December 17, 1947 dismissing the complaint as against the City and directing that the action proceed as against the individual defendant. In any case, the order of the District Court entered on the mandate of the Court of Appeals is not appealable and the appeal therefrom was properly dismissed by the Court of Appeals, Second Circuit, 170 F. (2d) 310 (1948).

## CONCLUSION

**The petition for a writ of certiorari should be denied.**

January 18, 1949.

Respectfully submitted,

JOHN P. MCGRATH,  
*Corporation Counsel of  
the City of New York,  
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SEYMOUR B. QUEL,  
ARTHUR H. KAHN,  
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